

POLICY NOTE

THE NATIONAL HEALTH SERVICE PENSION SCHEME (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) (SCOTLAND) REGULATIONS 2015

S.S.I. 2015/95

The above instrument was made in exercise of the powers conferred by section 10 of, and Schedule 3 to, the Superannuation Act 1972 and sections 1, 3 and 18 of, and Schedule 3 to, the Public Service Pensions Act 2013 (“the 2013 Act”). The instrument is subject to negative procedure.

The Regulations introduce transitional arrangements for members of the NHS Superannuation Scheme Scotland as a consequence of the changes introduced by the 2013 Act. The regulations also make necessary amendments to the National Health Service Superannuation Scheme (Scotland) Regulations 2011 (S.S.I. 2011/117) and the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013 (S.S.I. 2013/174). This instrument forms part of a group of three instruments that together implement reforms to pension scheme arrangement for health service workers. The other two linked instruments are: the National Health Service Pension Scheme (Scotland) Regulations 2015 and the National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2015.

Background

The 2013 Act requires that the “old” NHS Superannuation Scheme (Scotland) (the rules of which are set out in the regulations above) is closed to new members from 31 March 2015 and that a new NHS Pension Scheme (Scotland) should be introduced from 1 April 2015. The 2013 Act does however allow for those who are close to retirement to remain in their existing section of the old scheme and for others to remain in that scheme for a limited period determined on how close to retirement they are. For members who are compelled to move to the new scheme the 2013 Act also allows members to keep benefits already accrued in the old scheme and link them to their salary at the time of leaving the 2015 NHS scheme. The old scheme is a final salary scheme whereas the new scheme will be a Career Average Revalued Earnings (CARE) scheme.

Policy Objectives

These Regulations therefore cover the transitional and consequential arrangements and make provision in four broad areas. First, to implement protections permitting members close to normal pension age to remain in the old scheme. Second, for members without such protection, to provide a smooth transfer between old and new schemes such that the qualifying service, notices and earnings under the old scheme have effect for the corresponding purposes of the new scheme. Third, to implement measures that protect the value and functionality of pension benefits a member has built up in the old scheme before moving to the new scheme. Fourth, to ensure that where appropriate the rules and entitlements of the new scheme apply in relation to old scheme benefits when certain events occur – for instance when a member dies in service or claims ill-health retirement benefits.

The Regulations are set out as follows:

1. Chapter 1 of Part 2 and Schedule 1 provide for the circumstances in which individuals who are in receipt of a pension from the old scheme may join the new scheme.

2. Chapter 2 allows relevant options, nominations, notices & declarations made in respect of old scheme benefits to have equal application regarding new scheme benefits and membership.
3. Chapter 3 is concerned with transitional arrangements regarding the treatment of service and various breaks in service and absences during which a member may be moved across to the new scheme. Provision is made here to allow a member to be treated as though active in the old scheme whilst simultaneously remaining active in the new scheme and for qualifying service in the old scheme to count as such in the new scheme (and vice versa). Where a member is moved to the new scheme during a period of authorised absence from employment of up to 24 months, Chapter 3 also provides for the period of absence under the old scheme to be taken into account when determining how long the absence period may be under the new scheme. In addition, provision is also made so that in certain circumstances members may repay refunded contributions in the old scheme following a break in service after which they return to the new scheme.
4. Chapter 4 establishes the method for determining the rate of member contributions payable under the new scheme for active members who are moved across to the new scheme. Pensionable pay or earnings for purposes relating to the old scheme, such as calculation of benefits, would be determined in accordance with the provisions of that scheme.
5. Schedule 7 of the 2013 Act provides a facility for the old scheme retirement pension to be calculated using earnings at retirement or upon leaving the new scheme, thereby enabling those pension rights to be honoured in full (“the final salary link”). Chapter 4 provides that this facility may only be exercised once and that any subsequent period of scheme membership will not lead to a recalculation of the old scheme pension that is in payment. Provision is also made to apply an equivalent of the final salary link to scheme members who are practitioners with old scheme benefits built up partially on a career average basis.
6. Chapter 5 provides for the continuation of additional voluntary contribution contracts to purchase supplementary old scheme benefits during active membership of the new scheme. Where the benefits purchased relate to the 1995 section of the old scheme, the member can choose to claim these upon reaching normal pension age without leaving pensionable service in the new scheme.
7. Chapter 6 allows the portion of a bulk transfer payment that relates to a member’s rights in a final salary pension scheme to be received into the old scheme.
8. Chapter 7 makes arrangements relating to the payment of old scheme retirement benefits. Provision is made to extend eligibility to participate in the old scheme whilst an application for ill-health retirement and any appeal process are in train. Where a member of the new scheme claims ill-health retirement, any pension resulting from service under the old scheme becomes payable through and in accordance with the terms of the new scheme. Where a member retires from the new scheme on a partial or premature basis, provision is made for the retirement event to also have effect in relation to the member’s old scheme benefits. Equally, any old scheme pension in payment will be taken into account alongside a new scheme pension for the purposes of determining whether those pensions are to be abated upon re-employment.
9. Chapter 8 establishes that where a new scheme member dies, the benefit entitlement derived from any old scheme service is calculated in accordance with the rules of the new scheme rather than the old scheme.
10. Chapter 9 provides a further option for members of the 1995 Section of the NHS Pension Scheme to convert that period of membership to membership of the 2008 Section. Benefits are built up more quickly under the 2008 Section but with a later retirement age of 65. Members of the old scheme were first given this option before development of the reformed pension scheme. Those members who chose not to

convert membership and are eligible to join the new scheme will therefore have a second opportunity to do so.

11. Part 3 and Schedule 2 amend the old scheme to implement a number of transitional protections.
12. Section 18(1) of the Act prevents an individual building up benefits in the old scheme beyond 31 March 2015. However scheme regulations are permitted by section 18(5) to make limited exceptions. The PFA provided that members of the old scheme who on 1 April 2012 were less than 10 years from their normal pension age could exceptionally continue that membership (“full protection”).
13. A further tapering protection is provided to mitigate the ‘cliff edge’ effect for members who as at 1 April 2012 are more than 10 but less than 13 years and 5 months away from normal pension age. Tapered protection delays the point at which a member moves from the old to the new scheme. Members who do not qualify for protection are moved to the new scheme on 1 April 2015. The same protection principles apply to special class members of the 1995 section where the potential to qualify for a lower normal pension age is taken into account. Arrangements are made for members who return from a break in service of less than five years to retain protection and resume membership of the old scheme.
14. Provision is made so that members of the new scheme who have lost entitlement to a final salary link in respect of old scheme benefits or the equivalent for practitioners with old scheme benefits built up partially on a career average basis, are able to claim those old service benefits without needing to leave the employment that entitles membership of the new scheme.
15. The protection principles are also applied to transfers received from other public service pension schemes including corresponding NHS pension schemes in England and Wales and Northern Ireland. New provisions are inserted that give a member of the new scheme the option to transfer the cash equivalent value of their deferred old scheme benefits into the new scheme following a break in service of five years or more. The option is only exercisable at the first opportunity that it arises.
16. Schedule 2 also makes arrangements dealing with the transfer of final salary benefits in the old scheme from the corresponding final salary NHS pension schemes in England and Wales and Northern Ireland, and from other final salary public service schemes via the Public Sector Transfer Arrangements.
17. Finally, new provisions are inserted that require each member to be sent a ‘benefit information statement’ annually, in accordance with the Public Service Pensions Act 2013. The statement will describe the level of pension scheme benefits that the member has so far built up.

Consultation

The Scottish Public Pensions Agency consulted on these Regulations from 27 November 2014 to 4 January 2015. The consultation was circulated to interested parties via email as well as being hosted on the SPPA website.

Impact Assessments

No equality impact statement has been done for this individual instrument as one will be prepared for the wider pension reforms being introduced to the NHS scheme.

Financial Effects

No Business and Regulatory Impact Assessment has been prepared because no impact on the private or voluntary sector is foreseen.

Scottish Public Pensions Agency
An Agency of the Scottish Government
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